

## **BILL ANALYSIS**

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S.B. 1874  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Some six million Texans have a criminal record. Over the past decade these records have become easily available on the Internet. Now they are routinely used to make employment, housing, education, licensing, and credit decisions. This vastly increased use highlights the need to ensure that these records are accurate, updated, and not misused. Many states have updated their records laws for the digital age. Texas has not.

Current Texas law was produced over decades by patching together many bills of limited scope that often contain regulations more appropriate to paper than electronic records. Following the 83rd regular session, interim hearings in both the Senate and House identified many problems but no comprehensive solutions. Some 30 new patchwork bills are proposed in the 84th legislative session alone. Problems identified in current law include:

- (a) indecipherability, see, e.g., Code of Criminal Procedure, Article 55.01(a)(2);
- (b) the Department of Public Safety of the State of Texas (DPS) does not publish nonconviction records (those of arrests and charges before trial) but local agencies do publish these records, which are sensitive because they may be published before prosecutors have decided for the state what charges are appropriate, because pre-trial investigation may change prosecutors' view of the facts, and because nonconviction records may harm people who are still presumed innocent; and
- (c) current law provides for expunction (destruction), sealing (maintenance without public access), and correction of criminal records in specific cases, but current procedures are burdensome for courts and expensive when lawyers must be involved, so only about 10 percent of people who qualify under existing law can use it.

S.B. 1874, the Modern Electronic Records in Texas (MERIT) Act, proposes the following comprehensive framework:

- (1) Restate existing law in one place.
  - The public can better understand what records are lawfully available, how to access those records, and how to correct, seal, and expunge records under existing law.
  - Legislators can alter records policy more effectively if a clear framework exists from which they may begin to evaluate their choices.
  - Judges, prosecutors, and lawyers can more easily and consistently apply the law.
  - All criminal justice agencies retain complete access to all criminal records.
- (2) Prohibit bulk transfer of entire databases (but allow individualized access).
  - Some 2,500 Texas criminal justice agencies create, update, and correct criminal records, and they cannot properly maintain this data unless they control it.
  - Rather than sell entire criminal history databases to data miners and require data miners to update their databases to reflect changes made by 2,500 agencies, MERIT would ban bulk sale of criminal record databases, and require instead that agencies allow access to their databases directly, commonly called a "ping."
  - This individualized access, rather than sale of entire databases to the public, is DPS's preferred means of allowing access to criminal records.

- (3) Follow DPS in prohibiting purchase and sale of nonconviction records.
- DPS makes conviction and deferred adjudication records publicly available for any purpose, but DPS does not sell public access to nonconviction records.
  - Local police, sheriffs, and courts have always provided the press and public with full access to nonconviction records.
  - But data miners often collect nonconviction records from local agencies and resell, for example, mug shots of arrested persons over the Internet. Arrested persons often must pay data miners to remove data after favorable disposition of the charges.
  - MERIT would prohibit all purchase and sale of nonconviction records. The press and public retain full access to nonconviction records from local agencies.

- (4) Automatic record sealing saves time for courts and prosecutors.
- Most sealing cases are uncontested when a defendant meets objective requirements.
  - MERIT would provide for automatic sealing if the objective criteria in existing law are met, subject to unsealing whenever a prosecutor chooses to object in court.
  - Would save taxpayer money and ensure equal access to benefits of existing law, just as juvenile records are automatically sealed under current law.

- (5) Electronic service of orders concerning criminal records.
- When all charges are dismissed or a person is acquitted under current law, the person is required to guess which criminal justice agencies may have copies of records subject to erasure due to the acquittal.
  - MERIT would require service by secure electronic mail to all criminal justice agencies that maintain criminal records in the jurisdiction, saving time for court clerks and improving the efficacy of orders that records be erased permanently.

- (6) Sealing while charges are dismissed.
- Prosecutors often dismiss charges with the intent that they may refile the charges later if they receive new evidence or information. Consequently prosecutors expect to keep their records of dismissed cases until limitations expires.
  - But while no charges are pending against a person, the disabilities associated with having an arrest record should be minimized. MERIT would address this problem by allowing a person to seek an order sealing arrest records while charges are dismissed if the prosecutor agrees or if a court finds sealing to be in the best interest of justice.

- (7) Centralized correction.
- DPS already operates an effective bureau that investigates record inaccuracies.
  - MERIT would ensure that the public knows how to access DPS record correction.

MERIT was crafted with thorough input from the Department of Public Safety and the Office of Court Administration, which would have primary responsibility for implementing MERIT. Supporters include the Texas Criminal Justice Reform Coalition, which include the Texas Association of Business and the Texas Public Policy Foundation. Supporters emphasize:

- (a) Records law has such a large practical effect on people's lives that it must be accessible to the public, so that everyone affected by the law may access it and use it.
- (b) Taxpayer efficiencies may be gained by streamlining records practices.
- (c) The Legislature, and not special interests, must decide what balance of public access and privacy best promotes public safety in the digital age. Even when charges end in a plea bargain for deferred adjudication or in a conviction, recidivism is more likely, and rehabilitation less likely, when criminal records prevent the very employment and education that are necessary for successful reentry into society.

Opponents may or may not include members of the data mining industry, who would retain plenary rights to resell conviction and deferred adjudication records, and only have their rights to resell nonconviction records restrained by MERIT.

As proposed, S.B. 1874 amends current law relating to accessing criminal history record information and other records of involvement in the criminal justice system, authorizes fees, authorizes a civil penalty, and creates criminal offenses.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Department of Public Safety of the State of Texas in SECTION 3 (Articles 60A.15 and 60A.21, Code of Criminal Procedure) of this bill.

Rulemaking authority previously granted to the public safety director is rescinded in SECTION 4 (Section 411.081, Government Code) of this bill.

Rulemaking authority previously granted to the Department of Public Safety of the State of Texas is rescinded in SECTION 4 (Sections 411.086 and 411.135, Government Code) of this bill.

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is rescinded in SECTION 4 (Section 411.114, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. (a) Provides that this Act may be cited as the Modern Electronic Records in Texas Act or the MERIT Act.

(b) Provides that the legislature finds that:

- (1) Texas has an extensive program for sharing information concerning criminal activity among thousands of agencies;
- (2) some criminal history record information is confidential and unavailable to the public;
- (3) public access to records that identify a person's involvement in criminal activity is vital to public safety, but some privacy is also vital to public safety;
- (4) criminal records effectively punish people by limiting opportunities for employment, housing, education, credit, and other essential items;
- (5) recidivism is more likely, and rehabilitation less likely, when criminal history record information is published; and
- (6) the state, and not private data miners, must determine what punishment or publication is appropriate. Provides that, consequently, this chapter states the legislature's judgment as to what degree of privacy will best promote public safety in the digital age.

(c) Provides that this Act is intended to:

- (1) define what criminal history record information may be accessed by agencies and the public;
- (2) remove financial incentive for data miners to publish nonconviction records on the Internet; and
- (3) establish a prompt and efficient means of correcting, sealing, and expunging certain criminal history record information.

SECTION 2. Amends the heading to Chapter 60, Code of Criminal Procedure, to read as follows:

## CHAPTER 60. CRIMINAL HISTORY RECORD COLLECTION

SECTION 3. Amends Title 1, Code of Criminal Procedure, by adding Chapter 60A, as follows:

### CHAPTER 60A. CRIMINAL HISTORY RECORD ACCESS

#### SUBCHAPTER A. GENERAL PROVISIONS

Art. 60A.01. DEFINITIONS. (a) Defines "criminal history record information," "data miner," "deferred adjudication," "department," "expunge," "expunction," "nonconviction records," "office of court administration," "record," "seal," and "sensitive service agency."

(b) Provides that a term that is used in this chapter but is not defined by Subsection (a) has the meaning assigned by Chapter 60 (Criminal History Record Collection).

Art. 60A.02. WAIVER OF RIGHTS CONCERNING CRIMINAL RECORDS. Provides that an explicit or implicit waiver of any right to seal, expunge, or correct criminal history records under this chapter is not effective unless:

- (1) the waiver is written in the primary language of the waiving party;
- (2) the waiver contains a warning that criminal history record information that cannot be sealed, expunged, or corrected may have serious consequences for the waiving party's future employment, education, housing, and credit;
- (3) the waiver contains a recommendation that the waiving party consult an attorney before agreeing to the waiver, and describes the waiving party's options for consulting an attorney, including the option to seek appointed counsel under Article 1.051 (Right to Representation by Counsel) or 26.04 (Procedures for Appointing Counsel); and
- (4) the content of the written waiver, including the dangers and disadvantages of waiving rights under this chapter, is discussed orally with the waiving party by a qualified person who attests to the discussion in the waiver.

#### SUBCHAPTER B. DEPARTMENT OF PUBLIC SAFETY: DISSEMINATION OF AND ACCESS TO RECORDS

Art. 60A.11. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION. (a) Authorizes a criminal justice agency to access any criminal history record information necessary to:

- (1) conduct any activity included in the administration of criminal justice;  
or
- (2) screen applicants for employment with a criminal justice agency.

(b) Authorizes a sensitive service agency to access all conviction and deferred adjudication records, except for records of Class C misdemeanors, maintained by the Department of Public Safety of the State of Texas (DPS), whether sealed or unsealed, for the purpose for which access was granted to the agency.

(c) Authorizes any person to access for any purpose:

- (1) all records of convictions, other than for a Class C misdemeanor;

(2) all records of deferred adjudications, other than deferred dispositions granted for a Class C misdemeanor, that are not sealed;

(3) all nonconviction records, including records of arrests, citations, detentions, charges, and court proceedings not ending in conviction, that:

(A) a criminal justice agency chooses to make available under this chapter and Section 552.108 (Exception: Certain Law Enforcement, Corrections, and Prosecutorial Information), Government Code; or

(B) a judicial agency chooses to make available under the applicable court rules and this chapter.

(d) Authorizes any individual, or that individual's attorney or other legal representative acting in a fiduciary capacity, to access any criminal history record information identifying that individual, for any purpose.

Art. 60A.12. ACCESS FEES. (a) Provides that DPS is the only agency authorized to charge a fee for access to criminal history record information. Prohibits a state or local agency other than DPS from charging a fee for providing access to criminal history record information.

(b) Prohibits DPS from charging a fee to provide criminal history record information in response to an inquiry from:

(1) a criminal justice agency;

(2) the office of capital writs; or

(3) an appointed defense counsel who affirms that the information is needed to represent an indigent defendant.

(c) Authorizes DPS to charge a fee of:

(1) \$10 for each public inquiry for criminal history record information on a person that is processed only on the basis of the person's name, unless the inquiry is submitted electronically, in which event the fee is \$1;

(2) \$15 for each public inquiry for criminal history record information on a person that is processed on the basis of a fingerprint comparison search; and

(3) an amount sufficient to recover all costs directly or indirectly incurred by DPS in providing accurate, relevant, and updated criminal history record information in response to any inquiry for criminal history record information from a data miner.

Art. 60A.13. NATURE OF RECORDS. Provides that DPS at all times retains ownership of data maintained in DPS's records, including records containing criminal history record information, and may only license the use of DPS's data for a period of not more than 90 days, unless DPS specifies another period by rule.

Art. 60A.14. INTERNET WEBSITE. Requires DPS to consult with the office of court administration (OCA) and the attorney general as DPS considers necessary to create and maintain an Internet website that:

(1) uses electronic means to facilitate access to all criminal history record information described in this chapter;

- (2) provides access to this chapter and all rules adopted under this chapter;
- (3) effectively communicates how a person may access, seal, and expunge records under this chapter without legal representation;
- (4) notifies the person who accesses criminal history record information of applicable criminal penalties; and
- (5) contains the warning set forth in this subdivision.

Art. 60A.15. RULES. (a) Requires DPS to adopt rules to administer this chapter.

(b) Requires that rules adopted under this article provide for:

- (1) a uniform method of requesting criminal history record information from DPS;
- (2) the methods and formats for dissemination of criminal history record information;
- (3) security measures and policies that are designed to guard against unauthorized release or dissemination of criminal history record information that is maintained by DPS;
- (4) a uniform method of requesting that DPS seal DPS's records and notifying other agencies to seal records possessed by the agency under Subchapter G (Limiting Access by Sealing); and
- (5) the transmission of information among agencies by electronic means whenever possible and in accordance with record transmission procedures adopted by OCA.

(c) Authorizes DPS to adopt rules requiring a person requesting criminal history record information to submit any specific information considered necessary by DPS.

#### SUBCHAPTER C. ACCESS GRANTED BY DEPARTMENT TO CERTAIN SENSITIVE SERVICE AGENCIES

Art. 60A.21. ACCESS PROVIDED TO SENSITIVE SERVICE AGENCIES. (a) Authorizes sensitive service agencies to access deferred adjudication records from DPS even if those records are subject to an order of sealing under Subchapter G.

(b) Provides that the following are considered to be sensitive service agencies under this chapter:

- (1) the State Board for Educator Certification;
- (2) a school district, charter school, public school, private school, or regional education service center;
- (3) the Texas Medical Board;
- (4) the Texas School for the Blind and Visually Impaired;
- (5) the Texas Board of Law Examiners;
- (6) the State Bar of Texas;

- (7) a district court regarding a petition for name change under Subchapter B (Change of Name of Adult), Chapter 45, Family Code;
- (8) the Texas School for the Deaf;
- (9) the Department of Family and Protective Services;
- (10) the Texas Department of Juvenile Justice;
- (11) the Department of Assistive and Rehabilitative Services;
- (12) the Department of State Health Services, a local mental health service, a local intellectual and developmental disability authority, or a community center providing services to persons with mental illness or intellectual disabilities;
- (13) the Texas Private Security Board;
- (14) a municipal or volunteer fire department;
- (15) the Texas Board of Nursing;
- (16) a safe house providing shelter to children in harmful situations;
- (17) a public or nonprofit hospital or hospital district, or a facility defined by Section 250.001, Health and Safety Code;
- (18) the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, the consumer credit commissioner, and the credit union commissioner;
- (19) the Texas State Board of Public Accountancy;
- (20) the Texas Department of Licensing and Regulation;
- (21) the Health and Human Services Commission;
- (22) the Department of Aging and Disability Services;
- (23) the Texas Education Agency;
- (24) the Judicial Branch Certification Commission;
- (25) every county clerk's office in relation to a proceeding for the appointment of a guardian under Title 3 (Guardianship and Related Procedures), Estates Code;
- (26) the Department of Information Resources;
- (27) the Court Reporters Certification Advisory Board;
- (28) the Texas Department of Insurance;
- (29) the Teacher Retirement System of Texas;
- (30) the Texas State Board of Pharmacy; and
- (31) contractors and subcontractors only for purposes of compliance with an explicit term addressing criminal history record information that is stated in a contract with a special services agency.

(c) Authorizes DPS by rule to designate an additional agency as a sensitive services agency if:

- (1) the agency primarily serves vulnerable populations and has a demonstrated need for access to the information; and
- (2) the senate and house committees with jurisdiction over criminal justice issues consent to the addition.

Art. 60A.22. WRITTEN PROCEDURES. Prohibits a sensitive service agency from accessing sealed records unless the agency adopts written procedures specifying how criminal history record information may disqualify an applicant from employment, licensure, housing, or educational benefit. Requires that each procedure state the manner in which an agency official will determine on a case-by-case basis whether the applicant is qualified based on factors that include:

- (1) the specific responsibilities that the applicant seeks to undertake;
- (2) the nature and seriousness of each offense committed by the applicant;
- (3) the period that elapsed between each offense and the agency decision on the application; and
- (4) the efforts made by the applicant toward rehabilitation.

#### SUBCHAPTER D. PRIVATE ENTITIES

Art. 60A.31. ACCESS PROVIDED BY DATA MINERS; PROHIBITED ACTS. (a) Authorizes a person to directly or indirectly purchase criminal history record information from DPS and resell that information subject to any license granted by DPS.

(b) Prohibits a person from directly or indirectly causing the purchase or sale of criminal history record information that is not subject to a DPS license of use.

Art. 60A.32. DUTIES OF DATA MINERS. (a) Requires each person who purchases from DPS criminal history record information for resale to others to destroy all records of the information, including all paper copies and all copies that may be distributed by electronic means, within the person's possession or control with respect to which the person has received notice that:

- (1) DPS or a court issued an order of sealing covering the information under Subchapter G;
- (2) a court issued an order of expunction covering the information under Subchapter H (Limiting Access by Expunction); or
- (3) a period of at least 90 days, or another period prescribed by DPS rule, has passed since DPS provided the information.

(b) Requires each person who purchases from DPS criminal history record information for resale to others to:

- (1) maintain an e-mail account to receive electronic service of orders issued in response to petitions for expunction or nondisclosure under this chapter;
- (2) provide the e-mail address described by Subdivision (1) to DPS and to the district clerk in every county;

(3) monitor the e-mail account described by Subdivision (1) at least once each week; and

(4) comply with each order of expunction and with each order of sealing issued under this chapter.

#### SUBCHAPTER E. LOCAL AGENCIES

Art. 60A.41. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION PROVIDED BY OTHER GOVERNMENT AGENCIES. (a) Authorizes a judicial or executive agency, other than DPS, to permit public access to criminal history record information that the agency creates and maintains in the regular course of performing the agency's official duties, subject to the requirements of this chapter.

(b) Prohibits an agency other than DPS from directly or indirectly charging any person any fee for providing access to criminal history record information.

Art. 60A.42. ACCESS TO NONCONVICTION INFORMATION PROVIDED BY OTHER GOVERNMENT AGENCIES. Authorizes an agency other than DPS to provide public access to nonconviction criminal history record information only if:

(1) the agency warns the person accessing the records that state law imposes civil and criminal penalties on anyone who knowingly causes nonconviction records to be purchased or sold;

(2) the agency provides access to records:

(A) only at the agency's physical office, and not remotely by electronic means;

(B) for one individual at a time, and not in bulk;

(C) in a format that omits the subject's social security number and other personal identifying information commonly sought by identity thieves; and

(D) in accordance with rules prescribed by OCA for judicial agencies, and by the attorney general for executive agencies, to prevent the bulk dissemination of searchable nonconviction records.

Art. 60A.43. DUTIES OF AGENCY MAKING CRIMINAL HISTORY RECORD INFORMATION AND NONCONVICTION RECORDS AVAILABLE TO PUBLIC. Requires each agency that chooses to make criminal history record information or nonconviction records available to the public to:

(1) maintain an e-mail account to receive electronic service of hearings and orders issued in response to petitions for expunction or sealing under this chapter;

(2) provide the e-mail address described by Subdivision (1) to DPS and to the district clerk in each county within the agency's jurisdiction;

(3) monitor the e-mail account described by Subdivision (1) at least once each week; and

(4) comply with each order of expunction and with each order of sealing issued under this chapter.

#### SUBCHAPTER F. PROHIBITED ACTS; OFFENSES; CIVIL PENALTIES

Art. 60A.51. PROHIBITED ACTS. (a) Prohibits a person from directly or indirectly purchasing or selling any form of public access to any nonconviction record for any amount of money or other valuable consideration.

(b) Prohibits a person who has accessed criminal history record information for one purpose from using that information for a different purpose, or making the information available to different persons, unless specifically authorized by statute, DPS rule, or court order.

(c) Prohibits a person from confirming the existence or absence of criminal history record information to any person who is not authorized to access the information.

Art. 60A.52. BULK DISTRIBUTION PROHIBITED. (a) Prohibits DPS from selling or otherwise providing public access to criminal history record information in any bulk form.

(b) Authorizes DPS to sell the means to access one individual's record for a single request, and prominently display the date that DPS provided each record.

Art. 60A.53. SUSPENSION OF ACCESS BY DEPARTMENT. (a) Requires DPS to suspend a person's access to criminal history record information maintained by DPS if the person violates or fails to comply with:

(1) rules adopted by DPS under this chapter; or

(2) rules adopted by the Federal Bureau of Investigation that relate to the dissemination or use of criminal history record information.

(b) Requires DPS to set the length of a person's suspension under this article for a period calculated to ensure the person's complete compliance with DPS rules in the future.

Art. 60A.54. OFFENSE: UNAUTHORIZED USE OR DISCLOSURE. (a) Provides that a person commits an offense if the person knowingly:

(1) obtains criminal history record information in a manner other than as authorized by this chapter;

(2) uses criminal history record information for a purpose other than as authorized by this chapter; or

(3) discloses criminal history record information to a person who is not entitled to the information under this chapter or DPS rules.

(b) Provides that an offense under this article is a Class B misdemeanor, except that the offense is a felony of the second degree if the offense is committed for remuneration or the promise of remuneration.

Art. 60A.55. OFFENSE: PURCHASE OR SALE OF NONCONVICTION RECORDS. (a) Provides that a person commits an offense if the person knowingly purchases or sells nonconviction records.

(b) Provides that an offense under this article is a felony of the second degree.

(c) Provides that, for purposes of this article, a person purchases or sells access to nonconviction records if the person causes or employs another to cause the content of more than 10 nonconviction records to be made available by any form of search criteria in direct or indirect exchange for money or other valuable consideration, or for the promise of anything of value.

Art. 60A.56. CIVIL LIABILITY. (a) Prohibits a person from:

- (1) obtaining criminal history records in a manner other than as authorized by this chapter;
- (2) using the records for a purpose other than as authorized by this chapter; or
- (3) disclosing the information to a person who is not entitled to the information under this chapter or DPS rules.

(b) Provides that a person who violates Subsection (a) is liable to each subject of the criminal history record information for:

- (1) a civil penalty of \$1,000; and
- (2) actual damages sustained as a result of the violation.

(c) Entitles a person who prevails in an action brought under this article to recover court costs and reasonable attorney's fees.

#### SUBCHAPTER G. LIMITING ACCESS BY SEALING

Art. 60A.61. AUTOMATIC SEALING OF NONCONVICTION RECORDS AFTER CHARGES ARE REJECTED OR DISMISSED. (a) Requires the clerk, each time the state files a document with a municipal, justice, county, or district clerk in which the state dismisses or rejects a case, complaint, information, or indictment, to transmit to DPS:

- (1) the state's filed document; and
- (2) any other information that DPS requires to seal the records associated with the dismissed or rejected charges.

(b) Requires the clerk to transmit by electronic means all information required by DPS in a single transmission not later than the fifth business day after the date the document is filed under Subsection (a).

(c) Authorizes the state, not later than the 10th business day after the date a document described by Subsection (a) is filed, to prevent automatic sealing of nonconviction records under this article by notifying DPS that the state intends to pursue different charges arising from the same incident.

(d) Requires DPS, not earlier than the 11th business day but not later than the 15th business day after the date DPS receives notice of a document filed under Subsection (a), if DPS has not received notice from the state under Subsection (c), to cause all records related to the charge and the arrest or citation to be automatically sealed under Article 60A.64.

Art. 60A.62. COURT SEALING WHEN CHARGES DELAYED. (a) Authorizes a person who has been arrested or issued a citation for commission of an offense to make a motion to seal records related to the arrest or citation if no information or indictment is pending, and all complaints that produced the arrest or citation:

- (1) are pending; or
- (2) were dismissed or rejected.

(b) Requires that a motion under Subsection (a) be made in the court where a charge based on the arrest or citation was last pending. Provides that a cost or fee is not required to file or adjudicate the motion.

(c) Requires the court to notify the state of a hearing on the motion not later than the fifth business day before the date of the hearing. Requires the court, if the state files an indictment or information before the date of the hearing, to deny the motion without a hearing.

(d) Requires the court, on hearing, to order records of any arrest or citation subject to delayed, rejected, or dismissed charges to be sealed if:

(1) the court finds sealing the records to be in the best interest of justice;  
or

(2) the following period has passed after the arrest or citation with no information or indictment pending:

(A) three months if the only offenses charged by complaint on arrest or citation were Class C misdemeanors;

(B) six months if a Class B or A misdemeanor was charged by complaint on arrest, but no felony was charged; and

(C) one year if any felony was charged by complaint on arrest.

(e) Requires the clerk to forward to DPS by electronic means each order sealing records under this article. Requires DPS, on receiving an order sealing records, to cause all records related to the charge and the arrest or citation to be sealed as provided in the court's order.

(f) Requires OCA to prescribe and publish on its Internet website a form that courts may use to issue orders under this article.

Art. 60A.63. ORDER OF DISCHARGE AND DISMISSAL OF DEFERRED ADJUDICATION. (a) Authorizes the defendant, any time after expiration of a period of deferred adjudication or probation, to file a motion under the criminal cause number to seek an order of discharge and dismissal. Provides that a cost or fee is not required to file or adjudicate the motion.

(b) Requires the court, if the defendant is eligible for an order of discharge and dismissal, to promptly grant a motion under this subchapter.

(c) Provides that the effective date of each discharge and dismissal for purposes of this subchapter is the date that the period of deferred adjudication or probation expired or was successfully completed by the defendant, not the date on which the court entered the order. Requires that the effective date be written on each order of discharge and dismissal.

(d) Requires that each order of discharge and dismissal state certain text set forth herein.

(e) Requires the court clerk to provide one certified copy of each order of discharge and dismissal to the defendant without charge.

Art. 60A.64. AUTOMATIC SEALING AFTER DISCHARGE AND DISMISSAL. (a) Provides that a defendant placed on deferred adjudication is eligible for automatic sealing under this subchapter:

(1) on:

(A) the effective date of the discharge and dismissal if the offense for which the person was placed on deferred adjudication was a misdemeanor other than a misdemeanor described in Paragraph (B);

(B) the second anniversary of the effective date of the discharge and dismissal if the offense for which the person was placed on deferred adjudication was a misdemeanor offense involving violence under Chapter 20 (Kidnapping, Unlawful Restraint, and Smuggling of Persons), 21 (Sexual Offenses), 22 (Assaultive Offenses), 25 (Offenses Against the Family), 42 (Disorderly Conduct and Related Offenses), or 46 (Weapons), Penal Code; or

(C) the fifth anniversary of the effective date of the discharge and dismissal if the offense for which the person was placed on deferred adjudication was a felony; and

(2) provided that the defendant:

(A) was not convicted or placed on deferred adjudication for any offense during the entire period of deferred adjudication and waiting period under Subdivision (1), other than an offense under the Transportation Code punishable by fine only; and

(B) has never been convicted or placed on deferred adjudication for:

(i) an offense requiring registration as a sex offender under Chapter 62 (Sex Offender Registration Program);

(ii) an offense under Section 20.04 (Aggravated Kidnapping), Penal Code, regardless of whether the offense is a reportable conviction or adjudication for purposes of Chapter 62;

(iii) an offense under Section 19.02 (Murder), 19.03 (Capital Murder), 22.04 (Injury to a Child, Elderly Individual, or Disabled Individual), 22.041 (Abandoning or Endangering Child), 25.07 (Violation of Certain Court Orders or Conditions of Bond in a Family Violence, Sexual Assault or Abuse, or Stalking Case), 25.072 (Repeated Violation of Certain Court Orders or Conditions of Bond in Family Violence Case), or 42.072 (Stalking), Penal Code; or

(iv) any felony offense involving family violence, as defined by Section 71.004 (Family Violence), Family Code.

(b) Requires the agency, if the agency responsible for a defendant's community supervision or probation concludes that the defendant is eligible for automatic sealing under this article, to notify the state.

(c) Prohibits the records, if the state objects to automatic sealing and, not later than the 10th business day after the date the state receives notice that the defendant is eligible for automatic sealing, notifies the agency responsible for the defendant's supervision or probation of the objection, from being automatically sealed.

(d) Requires the agency, if the agency responsible for the defendant's supervision or probation does not receive a timely objection from the state as described by Subsection (c), to, on or after the 11th business day after the date the agency notifies the state under Subsection (b):

(1) promptly notify DPS that the defendant is eligible for automatic sealing; and

(2) provide DPS with a copy of the order of discharge and dismissal and all information regarding the criminal history record information to be sealed that DPS requires.

(e) Requires DPS, on receipt of an order of discharge and dismissal and the appropriate agency's statement that the defendant is eligible for automatic sealing, to cause to be sealed all criminal history records related to the offense for which the person was placed on deferred adjudication.

Art. 60A.65. COURT SEALING DEFERRED ADJUDICATION RECORDS BY MOTION. (a) Authorizes the defendant, if the agency responsible for the defendant's supervision or probation declines to automatically seal criminal history record information under Article 60A.64, to file a motion to seal the records.

(b) Requires that a motion under this article be filed under the criminal cause number and in the court that placed the defendant on deferred adjudication.

(c) Requires the court, in ruling on a motion under this article, to make a finding as to whether the defendant is eligible for record sealing under Article 60A.64. Prohibits the court, if the court does not make a finding that the defendant is eligible, from ordering the records sealed.

(d) Requires the court, if the defendant is eligible for record sealing under Article 60A.64, to decide whether to order the records sealed based on the court's determination of the best interest of justice.

(e) Requires the court, in response to a motion under this article, to enter an order sealing the deferred adjudication records or deny the motion. Requires the clerk, if the court orders records sealed, to electronically transmit the order to DPS.

(f) Requires DPS, not later than the 10th business day after the date DPS receives an order under this article, to cause the records to be sealed as provided in the order.

Art. 60A.66. UNSEALING OF DEFERRED ADJUDICATION RECORDS BY MOTION. (a) Authorizes the state, at any time before the second anniversary of the date criminal history record information is sealed under Article 60A.64 or 60A.65, to file a motion to unseal the records.

(b) Requires that a motion under this article be filed under the criminal cause number and in the court that placed the defendant on deferred adjudication.

(c) Requires the court, in ruling on a motion under this article, to determine whether the defendant is eligible for record sealing under Article 60A.64. Prohibits the court, if the court determines the defendant is ineligible under that article, from ordering the records to remain sealed.

(d) Requires the court, if the defendant is eligible for record sealing under Article 60A.64, to decide whether to order the records unsealed based on the court's determination of the best interest of justice.

(e) Requires the court, in response to a motion under this article, to enter an order unsealing the deferred adjudication records or an order directing the records to remain sealed. Requires the clerk, if the court orders sealed records to be unsealed, to electronically transmit the order to DPS.

(f) Requires DPS, not later than the 10th business day after the date DPS receives an order under this article, to cause the records to be unsealed as provided in the order.

Art. 60A.67. SEALING PROCEDURE AND EFFECT. (a) Requires DPS, if DPS is required to cause records to be sealed under this subchapter, not later than the 10th business day after the date that DPS receives the information that DPS requires to seal records, to:

(1) seal DPS's own records;

(2) prepare a document:

(A) stating certain language set forth herein; and

(B) indicating all of the criminal history record information needing to be sealed; and

(3) transmit by electronic means the document described by Subdivision (2) to each:

(A) magistrate, court, prosecuting attorney, correctional facility, central state depository of criminal records, and any other official or agency or other entity of this state or of a political subdivision of this state;

(B) central federal depository of criminal records if there is reason to believe that depository has criminal history record information that is the subject of the order;

(C) private entity that purchases criminal history record information from DPS or that otherwise is likely to have criminal history record information that is subject to the order; and

(D) e-mail address provided under Articles 60A.32 and 60A.43.

(b) Requires each person receiving notice, not later than the 30th business day after the date of receipt of a sealing notice described by Subsection (a)(2), to seal all criminal history record information maintained by the person that is described in the sealing notice.

Art. 60A.68. EFFECT OF SEALING. (a) Provides that a person whose criminal history record information is sealed under this subchapter is not required in any application for employment, education, housing, licensure, or credit to state that the person has been the subject of any criminal proceeding related to the sealed records.

(b) Prohibits a person from discriminating against an applicant for employment, education, housing, licensure, or credit on the ground that the applicant withheld information as authorized by Subsection (a).

(c) Authorizes a criminal justice agency or sensitive service agency to inquire about the events that produced the sealed records and use information about the events giving rise to the record as one factor, but not the sole factor, in making an employment, education, licensing, or housing decision.

Art. 60A.69. FORM. Requires OCA to prescribe and publish forms by electronic means that courts may use to issue orders under this subchapter.

#### SUBCHAPTER H. LIMITING ACCESS BY EXPUNCTION

Art. 60A.71. RIGHT TO EXPUNCTION. (a) Entitles a person who has been placed under a custodial or noncustodial arrest for commission of a felony or misdemeanor or issued a citation for the commission of a misdemeanor to have all records relating to the arrest or citation expunged if:

(1) the person is tried for the offense for which the person was arrested or issued a citation and is acquitted by a trial or appellate court, and if acquitted by a court of appeals, the period for filing a petition for discretionary review has expired;

(2) the person is convicted and subsequently granted judicial or executive relief from conviction if the order granting relief states that the order is rendered on the basis of the person's actual innocence;

(3) the person is convicted and subsequently pardoned;

(4) following the arrest or citation, the person was charged with a Class C misdemeanor for which the person was granted a discharge and dismissal;

(5) the state certifies that the records are not needed for use in any criminal investigation or prosecution, including an investigation or prosecution of another person;

(6) an information or indictment was dismissed or quashed following arrest, no other information or indictment is pending from the arrest, and the court finds that the indictment or information was dismissed or quashed because:

(A) the person completed a pretrial intervention program authorized under Section 76.011 (Operation of Certain Services and Programs), Government Code;

(B) the presentment of the indictment or information had been made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of the dismissal to believe the person committed the offense; or

(C) the indictment or information was void; or

(7) prosecution of the person for the offense for which the person was arrested or issued a citation is no longer possible because the limitations period has expired.

(b) Provides that, when some but not all charges arising from an arrest or citation qualify for expunction under Subsection (a), the right to expunction extends to all records of the qualifying charges, but not to any arrest, citation, or charge that does not qualify.

(c) Requires counsel, if a defendant becomes eligible for records expunction while represented by counsel appointed under Article 26.04, to:

(1) advise the defendant of the effect of expunction on civil and criminal proceedings and of the appropriate time to seek expunction; and

(2) petition for expunction as part of appointed counsel's duties on request of the defendant.

Art. 60A.72. DISTRICT COURT DECIDES EXPUNCTIONS. (a) Authorizes the following persons to file an ex parte civil action seeking expunction under this subchapter:

(1) a person who claims a right to expunction; or

(2) if the person is deceased, the deceased person's grandparent, parent, spouse, adult brother, adult sister, or adult child.

(b) Requires that an expunction petition be filed in the district court for the county in which:

(1) the arrest or citation at issue occurred; or

(2) the offense at issue was alleged to have occurred.

(c) Requires that an expunction petition include:

(1) the following identification information for the person claiming the right to expunction:

(A) full name;

(B) gender;

(C) race;

(D) date of birth;

(E) driver's license number, if any;

(F) social security number, if any; and

(G) address at the time of the arrest or citation, if known;

(2) the following arrest or citation information:

(A) the date the person was arrested or the citation was issued;

(B) whether an arrest was custodial or noncustodial;

(C) the name of the arresting agency or agency issuing the citation;

(D) the name of the county where the arrest or issuance of a citation occurred; and

(E) the name of the municipality where the arrest or issuance of a citation occurred, if any;

(3) for each offense charged in connection with the arrest or citation:

(A) the offense charged;

(B) the date that each charged offense is alleged to have occurred; and

(C) the court and case number for each charged offense; and

(4) which rights to expunction apply to each charge and each arrest or citation, as applicable.

(d) Requires the court's clerk, on filing of each expunction petition, to:

(1) seal from public access all of its files in the expunction case that identify the petitioner;

(2) consult the court coordinator of the assigned court and set a hearing date for each petition that is not earlier than the 30th calendar day after the date of the petition but not later than the 60th calendar day after the date of the petition; and

(3) not later than the next business day after the date the expunction petition is filed, electronically transmit a copy of the petition and the hearing date, time, and place to:

(A) the district attorney;

(B) the county attorney;

(C) DPS; and

(D) any criminal justice agency that has requested electronic notice of expunction proceedings from the court's clerk.

(e) Authorizes the court to grant any expunction petition at any time without a hearing if the district or county attorney agrees in writing that the petition should be granted.

(f) Requires the district court, at each expunction hearing, to decide:

(1) whether the petitioner has proved a right to expunction by a preponderance of the evidence; and

(2) whether the county or district attorney has proved by a preponderance of the evidence that due to ongoing criminal, civil, or administrative proceedings, exceptions to expunction should be made, each of which must specify:

(A) what records may be maintained;

(B) which criminal justice agencies may maintain the records; and

(C) for what period each criminal justice agency may maintain each record before destroying the record in compliance with the expunction order.

(g) Requires the district court, not later than the third business day after the date of an expunction hearing, to enter an order directing or denying expunction. Requires that each order granting expunction state:

(1) the information identifying the person whose records are to be expunged required under Subsection (c)(1);

(2) the incident number DPS assigned the individual incident of arrest under Article 60.07(b)(1) (requiring the incident card be serially numbered with an incident number in such a manner that the individual incident of arrest may be readily ascertainable), if any;

(3) which arrests or citations listed in Subsection (c)(2) are expunged;

(4) which charged offenses listed in Subsection (c)(3) are expunged; and

(5) any expunction limitations proved necessary by the county or district attorney.

(h) Authorizes the person who is the subject of the expunction order or any agency receiving the expunction order to appeal the court's decision in the same manner as in any other civil case.

(i) Requires the district court clerk, immediately on entry of each expunction order, to:

(1) provide without charge one certified paper copy of the order to the petitioner;

(2) transmit a copy of the order by electronic means to DPS's Crime Records Service;

(3) transmit a copy of the order by electronic means to each person and agency that has provided an e-mail address to the district clerk under Articles 60A.32 and 60A.43; and

(4) on the 30th calendar day after the date of the expunction order, expunge the court's entire case file.

**Art. 60A.73. EXPUNCTION PROCEDURE AND EFFECT; CRIMINAL PENALTIES.**

(a) Requires DPS, not later than the 10th business day after the date DPS receives an expunction order from a district clerk, to expunge all charge records and all arrest or citation records as ordered.

(b) Requires a person or agency, not later than the 30th calendar day after the date the person or agency receives an expunction order from a district clerk, to expunge all charge records and arrest or citation records in the possession of the person or agency, as ordered.

(c) Provides that a record is expunged only if it is physically or electronically altered in a way that renders impossible any use of the record to connect the person identified in the order as connected to the expunged arrest, citation, or charge.

**Art. 60A.74. OFFENSE: FAILURE TO DESTROY RECORDS SUBJECT TO ORDER OF EXPUNCTION.** (a) Provides that a person who knowingly fails to destroy identifying portions of a record ordered expunged under this chapter commits an offense.

(b) Provides that an offense under this article is a Class B misdemeanor, except that:

(1) the offense is a Class A misdemeanor if the person has been previously convicted of an offense under this article; and

(2) the offense is a second degree felony if the person has been previously convicted two or more times of an offense under this article.

**Art. 60A.75. OFFENSE: RELEASE OF EXPUNGED INFORMATION.** (a) Provides that a person commits an offense if the person releases, publishes, or uses records the person knows have been ordered expunged under this chapter.

(b) Provides that an offense under this article is a Class B misdemeanor, except that:

(1) the offense is a Class A misdemeanor if the person has been previously convicted of an offense under this article; and

(2) the offense is a second degree felony if the person has been previously convicted two or more times of an offense under this article.

Art. 60A.76. EFFECT OF EXPUNCTION. (a) Authorizes a person whose criminal history record information has been expunged under this subchapter to deny the occurrence of the arrest, citation, or charge and the existence of the expunction order.

(b) Prohibits a person from discriminating against an applicant for employment, housing, education, licensure, or credit because the applicant withheld information on an application as permitted by Subsection (a).

(c) Authorizes the person, if any person is questioned under oath in a criminal proceeding about an arrest, citation, or charge for which the records have been expunged, to state only that the matter in question has been expunged.

Art. 60A.77. FORMS. Requires OCA to prescribe and publish by electronic means forms for the petition for expunction and order for expunction under this subchapter.

#### SUBCHAPTER I. CORRECTING ERRONEOUS RECORDS

Art. 60A.81. CENTRALIZED CORRECTION REQUESTS; INVESTIGATION. (a) Authorizes any person who becomes aware that criminal history records contain erroneous information, that sealed records are publicly available, or that expunged records are available, to seek correction of records by filling out a form available on DPS's Internet website, or by telephoning DPS's Crime Records Service.

(b) Requires DPS to collect and record all correction requests without charging a fee and in a manner that facilitates presentation of requests.

(c) Requires DPS to investigate each request, and electronically transmit a written statement or make a telephone call informing the requestor of the status or response at least once during each 30-day period until the request is resolved.

(d) Authorizes DPS to deny a request for failure to provide necessary information only when DPS is unable to get the information from another source without significant time or expense.

(e) Authorizes DPS to require a requestor to submit fingerprints only if necessary to establish facts to correct the record at issue. Requires DPS to make necessary fingerprinting available to requestors without charge.

Art. 60A.82. ADMINISTRATIVE CORRECTION OF ERRONEOUS RECORDS. (a) Requires DPS, if DPS determines that any of DPS's criminal history record information contains an error, to correct the record and electronically transmit notice to all agencies and persons DPS considers reasonably likely to have received the erroneous information from DPS. Requires that the notice state that all agencies and persons receiving the notice are required correct the records.

(b) Requires DPS, if DPS becomes aware that a criminal justice agency's criminal history records may be erroneous, to contact the agency and attempt to resolve the issue by agreement.

(c) Requires the agency, if DPS and a criminal justice agency agree that the agency's records contain an error, to correct the record. Requires DPS to correct

all DPS records to be consistent with the agency's correction. Requires DPS to transmit notice of the correction electronically to all agencies and persons DPS considers reasonably likely to have received the erroneous information from DPS. Requires that the notice state that all agencies and persons receiving the notice are required correct the records.

Art. 60A.83. JUDICIAL CORRECTION OF ERRONEOUS RECORDS. (a) Authorizes the requestor, if DPS denies a correction request for any reason, to file a civil action:

(1) in the district court where the requestor resides, if the requestor resides in this state; or

(2) in the district court in Travis County, if the requestor resides in another state.

(b) Authorizes the requestor, if DPS does not deny a correction request, but the correction is not administratively completed due to disagreement with another criminal justice agency, to file a civil action in the district court where the criminal justice agency is located.

(c) Authorizes DPS and DPS's counsel to appear remotely, by telephone or video conference, in any civil proceeding filed under this article.

(d) Provides that the only relief available in an action under this article, after discovery, is:

(1) injunctive relief as necessary to secure accurate criminal history records; and

(2) all litigation costs, not including attorney's fees.

#### SUBCHAPTER J. REFERENCES IN LAW

Art. 60A.91. REFERENCES TO ORDERS OF NONDISCLOSURE AND ORDERS OF EXPUNCTION. (a) Provides that a reference in law to an order of nondisclosure or any provision of Subchapter F (Criminal History Record Information), Chapter 411, Government Code, means a reference to record sealing under Subchapter G of this code.

(b) Provides that a reference in law to expunction or any provision of Chapter 55 (Expunction of Criminal Records) means a reference to Subchapter H.

SECTION 4. Provides that the following are repealed:

Repealer: Chapter 55 (Expunction of Criminal Records), Code of Criminal Procedure.

Repealer: Subchapter F (Criminal History Record Information), Chapter 411, Government Code.

SECTION 5. Provides that a sensitive service agency is not required to adopt the policy prescribed by Article 60A.22, Code of Criminal Procedure, as added by this Act, before September 1, 2017.

SECTION 6. Effective date: September 1, 2015.